

A quarterly publication designed to serve the Examiner, Designee, and Instructor Community

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8710.3D

Yes it is finally done. Go to the AFS-600 website <http://afs600.faa.gov> and look on the right side of the home page under AFS-640 and click on Pilot Examiner Handbook. This links to another website to Order 8710.3D in Adobe Acrobat format.

The **Examiner Guide** is now in Order 8710.3D.

UNQUALIFIED APPLICANT

Greetings, Paul Maenza:

By way of introduction...I am Wanda Strassburg, WP15-32. I was a DPE from 1971-1977 and re-instated, after an absence from instructional flying, in April 2000. I attended the OKC DPE Initial Standardization training in October 1999.

I have a long-standing discussion with my home FSDO of San Jose and would love to have your comments. This is in regards to issuing an 8060-5 when an applicant does not meet the experience requirements, which qualify the applicant for the rating, applied for.

It is my contention that if they do not qualify, the test cannot begin and we are told that we must tell them when the "test begins."

Simply, how can we fail them if there has been "no test?"

Wanda,

You are right.

Order 8710.3C (Pilot Examiner's Handbook page 5-19 B. Inspect the Application (4) If a discrepancy that cannot be immediately corrected exists, **return the application to the applicant**. Inform the applicant of the reasons for ineligibility and explain how the applicant may correct the discrepancies.

You cannot return an application to an applicant if a Notice of Disapproval is issued. John Lynch of AFS-840 agrees.

The D model handbook will include the Examiner Test Guide in it. It also states that the test has not begun until the applicant is qualified. This is when the examiner **accepts** the application.

Paul

IMPROVING PILOT QUALITY (ANOTHER POINT OF VIEW)

This article is a response to an article that appeared in the October Designee Update.

John E. McClain
jemclain@bellsouth.com

John,

I read your letter in the Oct 2004 Designee Update and while I agree with your original premise, I disagree with your suggestions.

Specifically:

1. Tests (both knowledge and practical) must reflect what is considered critical and important. If it is not on a test, then it must not be important / relevant.
2. The whole point of a PTS is to standardize practical tests and, to the extent possible, make the evaluations more objective rather than subject to the whim of an examiner. As you know, pre PTS, CFI's trained students to pass a flight test (as the tests were called then) with a particular examiner. We definitely don't want to go back to that era. So testing outside the PTS defeats the whole purpose of the PTS.
3. While we can do many things differently to influence how CFI's instruct, we are not attacking the root cause – we are just trying to deal with the symptoms you mention. If many DPE's and the FAA share what you say, then we have to revamp the PTS's and Knowledge Tests to reflect what is important.
4. Nevertheless, a big area that is always difficult to teach and test for is judgment. We have made a lot of progress in this area and we need to make more progress. This will always remain a more subjective testing area.

Best regards,

Luca F. Bencini-Tibo', ATP/CFII

luca_bencini@hotmail.com

GETTING ON THE UPDATE LIST

I keep getting asked how can I get the Designee Update and where can I find old issues

If you want the Designee Update sent to your computer every quarter you have to enroll on the email list with the Oklahoma City Community College. The Internet URL is <http://faa.okccc.edu>, just follow the directions and the system will take care of the rest. Remember if you change your email address, please go back to this same address and update your email address. **This is your responsibility.**

If you want to read old issues of the Designee Update go the AFS-600 website. <http://afs600.faa.gov>. Look on the main page on the right side under AFS-640 and find Designee Update, click, and you'll have it. They are listed in chronological order.

Thanks, Paul

CHANGE 3 TO ORDER 8130.2E

NEW GUIDANCE PROVIDED ON ACCEPTANCE OF EXPORT

CERTIFICATES OF AIRWORTHINESS FOR USED AIRCRAFT UNDER A BILATERAL AGREEMENT

With the release of Chg. 3 to Order 8130.2E on August 30, 1004, many questions have arisen regarding what appears to be an FAA paradigm shift concerning what the regulations state and the requirements stipulated in this Order. The specific section in Change 3 receiving the most attention is Appendix 2. Appendix 2 did not exist prior to the release of Change 3. The title of Appendix 2 is, "Acceptance of An export Certificate of Airworthiness for Used Aircraft Under a Bilateral Agreement". One must understand the basis from which this new guidance is generated to interpret the policy correctly.

FAA Orders are a vital part of the FAA's Directive System along with Notices. The Directive System is used to provide guidance and policy for FAA employees and Designees. The Directive System also provides regulatory interpretation. The FAA's position, as reflected in Directives, may at times appear to be contrary to the regulations. Directives are based on policy interpretation, preamble language, Chief Counsel interpretations and any other information that can assist in providing as clear an understanding as possible to the end user. Because of the ever-changing international environment, FAA may use some flexibility in its interpretations of existing regulations, to meet the demands of a fluid aviation climate. Since the majority of our regulations were written many years ago, today's international aviation community may be hampered in it's day to day operations without workable policy. One method of obtaining workable policy is through flexible regulatory interpretation. The FAA must be able to reevaluate an interpretation and even change its position to some extent to stay abreast of global changes in aviation. The FAA must accomplish this without trampling on the original purpose for the regulation.

The policy provided in Appendix 2 is fairly clear with regards to acceptance of 100 hour inspections performed by a foreign entity on used aircraft exported to this country and then presented for airworthiness certificate. Briefly, the new guidance provides for acceptance of previously performed inspections, accomplished by non-U.S. certificated facilities, to meet the intent of the inspection requirement stipulated in § 21.183, (d)(2), when five conditions are met. A review of § 21.183, (d)(2), lists persons permitted to perform this inspection. No foreign entity is listed in the regulation. This is where the conflict exists. An FAA Order specifies a foreign facility may perform the required § 21.183, (d) inspection, when the Federal Aviation Regulation does not list that foreign facility as one authorized to perform the inspection. It appears we have reached an impasse with regards to interpretation of the regulations and what is provided as current policy in our Directive System. But have we? Let's ask ourselves a few pertinent questions. Are we the only country on the planet earth that is skilled enough to maintain complex aircraft? Obviously not! Do we not already accept export certificates from Bilateral countries that state that the exported products meet our Type Design and are in a condition for safe operation? Sure we do! With those concepts in mind, why could we not accept an inspection accomplished by certain countries, when the inspections were accomplished while under foreign registry and we have the appropriate Bilateral Aviation Safety Agreement? And your answer would be, "Because there is no allowance for acceptance of inspections accomplished by foreign non-U.S. certificated facilities in § 21.183, (d)(2)." And basically, your analogy would be correct, until you accept the flexibility of interpretation statements made above, and the realization of another important vestige of our existence as aviation professionals; Title 49 United States Code. As you know, Title 49, USC, replaced the old FAA Act of 1958. One important section in Title 49, USC

that is of extreme importance in understanding this new concept is § 40105 (b). § 40105 is titled, "International negotiations, agreements, and obligations". Under Paragraph (b) of this section, "Actions of the Administrator", item (1), the following is provided. "In carrying out this part, the Secretary of Transportation and the Administrator, (A) shall act consistently with obligations of the United States Government under an international agreement." Well guess what, a BASA with Implementation Procedures for Airworthiness (IPA's) is just that — an international agreement. A bilateral agreement may allow the FAA another means of complying with an existing regulation, and that is exactly what has occurred here. The FAA, in concert with other Civil Aviation authorities, is attempting to take full advantage of any and all airworthiness provisions provided in bilateral agreements in order to prevent costly duplication of inspection efforts. We should embrace this new policy with some skepticism because that's what we do in aircraft inspection, but on the other hand we should also realize that our life as aviation professionals is changing and will continue to do so. This is only another of many changes to our way of doing business with foreign governments and aviation professionals. The important thing to keep in mind when involved in a certification action based on an inspection performed by a foreign entity while under foreign registry, is that you as the FAA Inspector or Designee make the decision as to whether or not the inspection performed meets the scope outlined in § 43.15. The applicant must show you that the aircraft has been inspected, and you as an Inspector or Designee must find that the aircraft is eligible for the certificate requested or you don't issue the certificate. The fact that we CAN accept an inspection performed by a foreign entity with whom we have a BASA / IPA does not mean we must accept the inspection. That decision is yours and should be based on your experience and your now clarified understanding of the facts behind the policy.

Brad Outlaw
AFS-640
DAR Recurrent Seminar Program Manager

YOUR AIRPLANE?

HERE'S A GOOD ARTICLE FROM THE AOPA INSTRUCTOR REPORT IF YOU MISSED IT.

Before you embark on any flight with more than one pilot on board, it is imperative to determine whom is pilot in command (PIC), and how (or why) that designation will change in an emergency.

On November 14, 2002, a private pilot candidate and a designated pilot examiner (DPE) flying a Piper PA-28 learned this lesson the hard way after a failed recovery from a simulated engine-out approach to a field. Although the aircraft was damaged substantially, no one was injured in this accident.

According to the DPE, the flight test was progressing satisfactorily when he retarded the throttle in order to simulate an engine failure, to be followed by a simulated approach to a landing. The DPE maintained control of the throttle in order to occasionally clear the engine during the descent. The student selected a satisfactory field and continued the approach. The student then applied full flaps and maintained airspeed at 70 to 75 knots.

When the aircraft was about 100 feet agl, the DPE called for the student to execute a go-around. The student reached over to advance the throttle, but saw the DPE's hand on the throttle quadrant and the throttle only halfway in. The student felt the power "kick in" and proceeded to retract a "couple of notches of flaps." At this point, the airplane began to sink at a high rate, and the student

attempted to regain control and recover. According to the DPE, the student was properly executing the recovery when they struck the terrain.

After the accident, the examiner said that from the time he realized that they were going to hit the ground to the time the aircraft came to rest, he did nothing to assist the student pilot and found it odd that he did not attempt to help.

The NTSB determined the cause of this accident to be inadequate supervision and the premature raising of the flaps before a positive rate of climb was established.

The Private Pilot Practical Test Standards emphasizes that a positive exchange of flight controls must take place between the student and the examiner. It states: "During flight, there must always be a clear understanding between pilots of who has control of the aircraft. Prior to flight, a briefing should be conducted that includes the procedure for the exchange of flight controls. A positive three-step process in the exchange of flight controls between pilots is a proven procedure and one that is strongly recommended. When one pilot wishes to give the other pilot control of the aircraft, he or she will say, "You have the flight controls." The other pilot acknowledges immediately by saying "I have the flight controls." The first pilot again says, "You have the controls." When control is returned to the first pilot, follow the same procedure. A visual check is recommended to verify that the exchange has occurred. There should never be any doubt as to who is flying the aircraft.

Although FAR 61.47 state, that the student will act as PIC during the checkride, in this case neither the student nor the DPE was sure of who had control of the throttle. A positive transfer of throttle control did not take place, so no one was in command. During every flight - whether it is a personal flight with another pilot or a checkride - always know who is PIC before takeoff.

Kristen Hummel
AOPA Manager of Aviation Safety database

Q AND A LINK FOR DME'S AND DPRE'S

Following the implementation of revision "J" to the Order 8610.4 and 8610.5, AFS-640 has revised the Initial and Recurrent Seminars to address the changes that are now in effect for the Designated Mechanic Examiner (DME) and the Designated Parachute Rigger Examiner (DPRE). Since then, AFS-640 has responded to numerous questions regarding these changes especially in the area of the new Practical Test Standards (PTS). To help in answering these questions, AFS-640 has included a new link on their web page. This link, titled "Q & A for DME/DPRE PTS", addresses some of the most frequently asked questions we have received from seminar attendees, email, and telephone calls. The web address for AFS-640 is: <http://afs600.faa.gov/AFS640.htm>. The Q & A link is found under the "Other Information" heading. If you do not find the question/answer that you are looking for or you have a question that you think should be included on the page, please contact Richard Fletcher at (405) 954-6485, or via email at: richard.j.fletcher@faa.gov.

Richard J. Fletcher
Designee Program Manager, AFS-640

COMMENTS

Do you have any comments or recommendations for the Practical Test Standards or Light Sport Aviation?

The AFS-600 has established an email address for each of the responsible branches, you just have to send an email. The branch records this email and the responsible Aviation Safety Inspector will draft you a response. The branch saves this response and when it is time to implement changes they are used for reference. Sounds good, be part of the system. AFS-630 writes the Practical Test Standards and AFS-610 is the Light Sport Aviation Branch. This can include both operations and airworthiness issues.

AFS630comments@faa.gov

AFS610comments@faa.gov

Special Flight Permits and Transportation Security Administration

Airspace Waivers

Coordinated through TSA

FAA Order 8130.2F, Paragraph 199, *“Special Flight Permits for Certain Large Aircraft for which 14 CFR Part 125, Certification and Operations: Airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more, is not applicable.”*

Subparagraph (6) states, “Indiscriminate operation of these types of aircraft should be discouraged by restricting the operation of the aircraft to specific airports and to a specific flight path. The special flight permit should be issued for no more than **7 days.**”

AFS-640 personnel discuss the special flight permit restriction of 7 days at the Designee Recurrent Standardization Seminars. In addition, our instructors have always said that we learn more from the designees than we could ever teach them. With that said, let us introduce to you the requirement of a TSA Airspace Waiver.

Even though it is not the responsibility of the airworthiness designees to inform the applicant of airspace restrictions, other than through the operating limitation attached to the FAA Form 8130-7, designees will be providing a public service to the industry if they encourage applicants for Special Flight Permits to visit the National Business Aviation Association (NBAA) website for guidance and general information concerning TSA waivers.

<http://web.nbaa.org/public/ops/security/waivers/>

This web site will connect the applicant with important waiver information and provide the applicant with the TSA Waiver Request Form, Single Trip, Ferry and Fleet Waivers.

The two page TSA Waiver Request Form, Single Trip, Ferry and Fleet Waivers (Version 102904) is self-explanatory. Once completed, the Form is faxed to (571) 227-1945. Waiver applications require

a minimum of seven days to process. Incomplete or illegible information may result in delays in the processing of the waiver request.

As relayed to AFS-640 by designees at the recurrent standardization seminars, Special Flight Permits may expire prior to the issuance of the TSA Wavier due to the 7-day limitation.

At the time of this writing, the application for the TSA Airspace Waivers is not available for transfer electronically, however, TSA has informed personnel in AFS-640 that they are working on an electronic version, which will speed the process over the current FAX requirement. This office will post updates on future developments concerning TSA waivers as the information becomes available.

By John M. Rice National Resource Specialist for airworthiness certification and airworthiness designees

WHICH WAY SHOULD I GO?

As a child, when I would ask one parent for something and didn't get the answer I wanted, I did what any clever kid would do: I made tracks to the other parent, before they had time to communicate with each other, and made the same request of that parent; hoping for a more favorable answer. The temptation to continue this behavior later in life is sometimes too great to resist. We all, possessing within ourselves to some degree a bit of narcissism, want what we want, when we want it, how we want it. We like to have things our own way. The same principal, perhaps to an even greater measure, applies to those of us in aviation as well.

Let us take into consideration the different forms of FAA guidance. When we do this, we see there exists a hierarchy of application. In the case of occasional conflicting FAA guidance, one form will take precedence over another. And, as we teach in our Designated Pilot Examiner Seminars across the country; "If you find guidance which conflicts with the Federal Aviation Regulations, **always** follow the regulation."

Last month a well know alphabet organization, in their electronic newsletter, fielded a question from a constituent concerning taking a practical test for, and receiving, (sort of) an ATP Certificate before reaching the age of 23. The alphabet organization's response to the question was, and I paraphrase: *The provision exists for an applicant, who is at least 18, to take the practical test and, upon passing, receive a "letter of aeronautical competency" from the CO (Certifying Official) which can then be presented, along with a valid first-class medical certificate, and exchanged for an ATP Certificate upon that person reaching their 23rd birthday; this, as long as they meet all other eligibility requirements.*

At one time this was the case. To the organization's credit, this guidance was obtained from FAA Order 8700.1, General Aviation Operations Inspector's Handbook volume 2, chapter 7 paragraph 5D. The FAA is in the process of updating this Order as we speak. (As an ASI working in a FSDO, the most vicious tongue-lashing I ever received from an FAA customer was over this practice when it was initially abolished.) So what **has** changed?

Back in August of 1997 a major re-write of FAR Part 61 was enacted. This re-write also included Subpart G—Airline Transport Pilots, Eligibility Requirements: General, FAR 61.153. This FAR states, among other things, "To be eligible for an airline transport pilot certificate, a person must: (a) Be at least 23 years of age; etc.... (It continues and lists several other requirements.) While it is true the

age requirement existed before the 1997 re-write of the FAR's, a change elsewhere in the FAR's affected FAR 61.153.

In the 1997 re-write, FAR 61.39 – Prerequisites for Practical Tests, was altered, which in turn affected the practice of issuing an ATP Certificate before reaching the age of 23. FAR 61.39(a)(5) states:

“Except as provided in paragraphs (b) and (c) of this section, to be eligible for a practical test for a certificate or rating issued under this part, an applicant must:...Meet the prescribed age requirement of this part for the issuance of the certificate or rating sought;”

Having testified before a federal administrative law judge during an FAA enforcement case, I can say with confidence that, notwithstanding what FAA Order 8700.1 now states, when the chips are down, the FAR's will always take precedence.

You may ask, “What am I to do when no FAR exists to cover the situation?” Or, “What if the FAR, with its legal-eagle jargon, is ambiguous and/or confusing?” We now have an answer for you. (Well, the answers have been there for some time, but thankfully they now have teeth!) I'm referring to the FAA FAQ's, which can be found at: <http://www.faa.gov/avr/afs/afs800/docs/pt61FAQ.doc>

Back in June of 2004 James (Jim) Ballough, Director, Flight Standards Service had the moxie to put power behind the FAA FAQ's. In an FAA memo he stated, and I quote, *“Only the FAA's Office of Chief Counsel and Regional Chief Counsel provide legal interpretations. However, it is important that our personnel be aware of these (FAQ) websites. I want it understood that the answers and information provided on these websites are official FAA Flight Standards policy about Part 61, Part 141, and Part 142.”* (Emphasis mine) That pretty much states it like it is, in nice, refreshingly unambiguous terms.

Additionally, if you, as a CO, certify an applicant, who is below the age of 23, for an ATP Certificate, and send that certification file to AFS-760, Airman Records in Oklahoma City, you will soon be getting a return file from them. That is if your FSDO doesn't send it back to you first. Also, something else we emphasize in the Designee Seminars; a CO, should never, ever, ever certify an applicant for a certificate or rating, when that applicant is not eligible for that certificate or rating. If that were done, and an incident or accident were to ensue, in today's litigious society, the FAA could be the least of the CO's troubles.

So to recap; due to the lengthy process required to update FAA Orders, on very rare occasions you may find conflicting FAA guidance. If you do, always follow the FAR's. In the absence of an FAR governing that particular situation, or if the FAR is a bit confusing and you need clarification, check the FAA FAQ's for additional guidance and clarification. Thorough research should be done before following **any** guidance conflicting with these two sources of information, no matter the perceived reliability of the source.

One more thing I might mention as a footnote, a first-class medical certificate is no longer required to take the ATP practical test. A third-class medical certificate will suffice for taking **any** practical test. Just remember, a higher class medical certificate may be needed in order to exercise the **privileges** of that certificate or rating, but a valid third-class medical certificate is sufficient for taking **any** practical test.

Kelly D. Sweeten, Instructor
Designee Standardization Team, AFS-640

The Transportation Security Administration (TSA) issued on September 20, 2004, an interim final rule on "Flight Training for Aliens and Other Designated Individuals." While the citizenship verification portion of the rule does not directly affect nor place any additional requirements on the designated pilot examiner community, it has caused significant confusion.

In the rule, the TSA requires that the citizenship status of each person be determined before they begin training in aircraft weighing 12,500 pounds or less for a recreational, sport pilot, or private pilot certificate; multiengine rating at any level; or instrument rating. It is important to note that neither the FAA nor TSA consider practical tests "flight training," meaning that designated pilot examiners are not required to verify that citizenship has been validated. **This responsibility lies solely with the flight school or flight instructors who provide the flight training.**

Because pilot examiners are a valuable resource to flight instructors and many are called upon to help educate the flight training community, it is imperative that examiners become familiar with the key facets of the rule. It requires mandatory security awareness training for all flight instructors. Also, there are different steps instructors need to take in order to train U.S. versus non-U.S. citizens.

SECURITY AWARENESS TRAINING

The rule mandates both initial and recurrent security awareness-training programs for each flight school employee, which includes flight instructors, independent flight instructors, ground instructors, and any other employee who has direct contact with students regardless of whether they are training foreign students. Flight school employees must receive the initial security awareness training by January 18, 2005. Employees hired after January 18, 2005, must receive the training within 60 days of being hired. To receive the training, see the Department of Homeland Security's Web site (<http://download.tsa.dhs.gov/fssa/training/>). Flight schools must maintain a record of this training for one year after the employee leaves the school. These records are subject to TSA and FAA audits.

TRAINING U.S. CITIZENS

Pilot examiners should also be aware that the rule requires flight schools and independent flight instructors to determine the citizenship status of each person before they begin training for a recreational, sport pilot, or private pilot certificate; multiengine rating at any level; or instrument rating (does not include recurrent training). After doing so, the flight school or independent flight instructor must either provide an endorsement in the applicant's logbook certifying that they have been presented citizenship documentation or a copy of the documents must be kept for five years. The TSA supplied the following as an example endorsement: "I certify that [insert student's name] has presented me a [insert type of document presented, such as a U.S. birth certificate or current U.S. passport, and the relevant control or sequential number on the document, if any] establishing that [he or she] is a U.S. citizen or national in accordance with 49 CFR 1552.3(h). [Insert date and instructor's signature and CFI number.]" Flight training may begin after the documents have been reviewed and either the logbook endorsement is made or copies of the citizenship information are obtained by the instructor.

TRAINING NON-U.S. CITIZENS

Flight schools or flight instructors that provide training to non-U.S. citizens for recreational, sport pilot, or private pilot certificates; multiengine ratings at any level; or instrument ratings (does not include recurrent training) must register with TSA at (www.flightschoolcandidates.gov/fsindex.html). After notifying TSA of the student's intent to begin flight training, the student is required to supply fingerprints and a \$130 processing fee. Flight training may begin only after TSA has notified the flight school and the candidate via e-mail that the agency has received the fee and fingerprints. Immediately after the non-U.S. citizen reports for training, a digital (or digital version of a traditional)

photo must be taken and provided to TSA. The school must keep the photo, as well as other information about the non-U.S. citizen, for five years.

The Aircraft Owners and Pilots Association (AOPA) has created a resource center (www.aopa.org/tsa_rule/) designed to keep you fully informed about the changing interpretations and effects of this confusing and onerous rule. The resource center provides full details of the actions flight instructors must undertake to be in compliance with TSA.

Luis Gutierrez
Director, Regulatory and Certification Policy
Aircraft Owners and Pilots Association